SUPREME COURT OF THE UNITED STATES.

No. ~~82.~~ 32.

WILLIAM S. NICHOLLS, PLAINTIFF IN ERROR,

VERSUS

SAMUEL S. & JOSEPH N. FEARSON.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE COUNTY OF WASHINGTON, D. C.

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UNITED STATES OF AMERICA, set.—*The President of the United States to the judges of the circuit court of the United States for the District of Columbia, sitting for the county of Washington, greeting:*

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you or some of you, between William S. Nicholls, plaintiff, and Samuel S. Fearson and Joseph N. Fearson, defendants, a manifest error hath happened to the great damage of the said William S. Nicholls, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of August next, in said Supreme Court, to be then and there held; and that the

record and proceeding aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right and according to the laws and the custom of the United States should be done.

Witness the honorable John Marshall, Chief Justice of the said Supreme Court. Issued this 18th day of May, 1831.

WILLIAM BRENT,
Clerk circuit court District of Columbia, city of Washington.

DISTRICT OF COLUMBIA, sct.—*The United States of America, to Samuel S. Fearson and Joseph N. Fearson, greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, on the first Monday of August next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for for the District of Columbia, in the county of Washington, wherein William S. Nicholls is plaintiff in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said William S. Nicholls, in the said the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the honorable William Cranch, Chief Justice of the circuit court of the District of Columbia, this 18th day of May, 1831.

W. CRANCH.

Served by reading the within to Samuel S Fearson and Joseph N. Fearson, and left a copy of the within with Samuel S. Fearson.

THOMAS WOODWARD.

May 25th, 1831.

The truth of the above sworn to by Thomas Woodward in open court.
Test, W. BRENT, *Clerk.*
May 25th, 1831.

DISTRICT OF COLUMBIA, *county of Washington*, sct.

Be it remembered, that on the 18th day of May, in the year of our Lord eighteen hundred and thirty-one, William S. Nicholls, by Key and Dunlop, Esquires, filed in court here, the following petition and order of the honorable Henry Baldwin thereon, to wit:

WILLIAM S. NICHOLLS, *vs.* SAMUEL S. FEARSON AND JOSEPH N. FEARSON.

In this case the defendants brought a note to the plaintiff, drawn by one Stewart, payable at sixty days, and endorsed by the defendants, which had been given by Stewart to defendants for goods, and asked him what he would give for it. The note was for $101. The plaintiff agreed to give $98 for it, which defendants took, and left the note with plaintiff. The note fell due and was not paid by maker, and defendants, having had due notice as endorsers, were sued. On the trial the defence was usury, which the court sustained.

We think the court were clearly mistaken in this decision, and that judgment could be reversed if the sum was large enough for an appeal.

KEY & DUNLOP.

GEORGETOWN, 22*d April*, 1831.

To the honorable Henry Baldwin, one of the judges of the Supreme Court of the United States:

The petition of William S. Nicholls respectfully sheweth, that a judgment has been given against him in the circuit court of the District of Columbia, for Washington county, as will appear by the record thereof herewith sub-

mitted. Your petitioner considers that the said judgment is not only erroneous, but that it "involves a question of law of such extensive interest and operation as to render its final decision by the Supreme Court of the United States desirable."

Wherefore he prays that a certificate may be granted him, and the case allowed to be carried up for the revision of that tribunal.

W. S. NICHOLLS.

We, the subscribers, conceiving the aforegoing petition reasonable, and that it is desirable in a commercial community that the question decided by the circuit court should be settled by a decision of the Supreme Court of the United States, do respectfully concur in requesting the allowance of a writ of error for the removal of the cause therein mentioned and referred to.

GEORGE RISTON,
JOSHUA TEVIS,
THOMAS BIDDLE,
JAMES NEVINS,
JAMES MUSGRAVE,
JAMES MARTIN,
JACOB M. THOMAS,
ALEXANDER BENSON.

William S. Nicholls having exhibited his petition to me this day, complaining of the judgment rendered against him in the action brought by him against Samuel S. and Joseph N. Fearson, as is set forth in the within transcript, and having examined the same, I am of opinion that the complaint made by him in relation to the errors alledged in the judgment aforesaid, involve questions of law of such extensive interest and operation as to render the final decision of them by the Supreme Court of the United States desirable. I do direct that, on the said Nicholls complying with the terms and conditions prescribed by law, he shall be allowed a writ of error to the Supreme Court in this case.

HENRY BALDWIN.

To the clerk of the circuit court of the
United States for the District of Columbia.

PHILADELPHIA, *9th May*, 1831.

And on the said eighteenth day of May, in the year eighteen hundred and thirty-one, the said William S. Nicholls filed in court here the following approved appeal bond, to wit.

"Know all men by these presents, that we, William S. Nicholls, Charles A. Burnett, and David English, are held and firmly bound unto Samuel S. Fearson and Joseph N. Fearson in the full and just sum of two hundred dollars, current money, to be paid to the said Samuel S. Fearson and Joseph N. Fearson, their certain attorney, executors, administrators, or assigns, to which payment well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this eighteenth day of May, in the year of our Lord one thousand eight hundred and thirty-one.

Whereas lately at a circuit court of the United States for the District of Columbia, sitting for the county of Washington, in a suit pending in the said circuit court, wherein the said William S. Nicholls was plaintiff, and the said Samuel S. Fearson and Joseph N. Fearson were defendants, judgment was rendered against the said William S. Nicholls, and he having ob-

tained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Samuel S. Fearson and Joseph N. Fearson, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of August next.

Now the condition of the above obligation is such, that if the said William S. Nicholls shall prosecute his writ to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

W. S. NICHOLLS, [SEAL.]
CHARLES A. BURNETT, [SEAL.]
DAVID ENGLISH, [SEAL.]

Signed, sealed, and delivered in the presence of
RICHARD LAY,
E. HEARD.

Approved, W. CRANCH.

Whereupon the writ of error issued, which is hereto annexed, directed to the judges of the circuit court of the District of Columbia, for the county of Washington.

And in pursuance thereof, a record of the proceedings had in the said court, in the said cause of William S. Nicholls against Samuel S. Fearson and Joseph N. Fearson, is now accordingly transmitted to the said Supreme Court, and is in the words and figures following, to wit:

DISTRICT OF COLUMBIA, set.

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the first Monday of May, being the first day of the same month, in the year of our Lord one thousand eight hundred and twenty six, and of the independence of the United States of America the fiftieth. Present,

The Hon. WILLIAM CRANCH, *Chief Judge.*
BUCKNER THRUSTON and JAMES S. MORSELL, *Assistant Judges.*
TENCH RINGGOLD, Esquire, *Marshal.*
WILLIAM BRENT, *Clerk.*

In the records of the proceedings of the said court, among others, are the following, to wit:

WILLIAM S. NICHOLLS, *vs.* SAMUEL S. FEARSON and JOSEPH N. FEARSON.

Be it remembered, that heretofore, to wit, on the twentieth day of November, one thousand eight hundred and twenty-four, the said William S. Nicholls, by Key and Dunlop, his attorneys, prosecuted and sued forth, out of the circuit court here, the United States writ of capias ad respondendum, directed to the marshal of the District of Columbia, in the words and of the tenor following, to wit:

DISTRICT OF COLUMBIA, to wit.—*The United States of America to the marshal of the District of Columbia, greeting:*

We command you that you take Samuel S. Fearson and Joseph N. Fearson, late of Washington county, if they shall be found within the county of Washington, in your said district, and them safely keep, so that you have their bodies before the circuit court of the District of Columbia, to be

held for the county aforesaid, at the city of Washington, on the third Monday of December next, to answer unto William S. Nicholls in a plea of trespass on the case, and so forth. Hereof fail not at your peril, and have you then and there this writ.

Witness William Cranch, Esquire, Chief Judge of our said court, at the city the 1st day of November, Anno Domini one thousand eight hundred and twenty-four.

Issued the 20th day of November, 1824.

WILLIAM BRENT, *Clerk.*

K. & D.

At which mentioned third Monday of December, in the year of our Lord one thousand eight hundred and twenty-four, being the day of the return of the aforegoing writ, come into the circuit court here the said William S. Nicholls, by his attorneys aforesaid; and the marshal of the District aforesaid, to whom the said writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

"Cepi both.

TENCH RINGGOLD, *Marshal.*"

And the said Samuel S. Fearson and Joseph N. Fearson, being called, appear in court here by R. S. Cox, Esquire, their attorney. And thereupon, on motion of the said Samuel S Fearson and Joseph N. Fearson, by their attorney aforesaid, it is ruled by the court here that the said William S. Nicholls declare against them, the said Samuel S. Fearson and Joseph N. Fearson, in the plea aforesaid, or judgment by the court here will be rendered against him in default thereof; and the said William S. Nicholls, by his attorney aforesaid, prays leave of the court here to imparle until the first Monday of May next, and then to declare against the said Samuel S. Fearson and Joseph N. Fearson in the plea aforesaid, and to him it is granted; the same day is given to the said Samuel S. Fearson and Joseph N. Fearson also.

At which said first Monday of May, in the year of our Lord one thousand eight hundred and twenty-five, to which said day the said William S. Nicholls had leave to imparle, and then to declare against the said Samuel S. Fearson and Joseph N. Fearson in the plea aforesaid, comes again into the circuit court here, as well the said William S. Nicholls, by his attorneys aforesaid, as the said Samuel S. Fearson and Joseph N. Fearson, by their attorney aforesaid. And the said William S. Nicholls, by his attorneys aforesaid, declares against the said Samuel S. Fearson and Joseph N. Fearson, in the plea aforesaid, in form following, to wit:

"District of Columbia, *Washington county*, ss.

Samuel S. Fearson and Joseph N. Fearson, late of Washington county, were attached to answer unto William S Nicholls in a plea of trespass on the case, and so forth. Whereupon the said plaintiff, by Key and Dunlop, his attorneys, complain that whereas hertofore, to wit, on the twenty-second day of October, in the year of our Lord eighteen hundred and twenty-one, at Georgetown, to wit, at Washington county aforesaid, one Levin Stewart made his certain promissory note, in writing, bearing date the day and year aforesaid, and thereby then and there, sixty days after the date thereof, promised to pay to the defendants, trading under the name and firm of S. and J. Fearson, by the name of S. and J. Fearson, or order, the sum of one hundred and one dollars, current money of the United States, for value re-

ceived; and the said defendants, to whom or to whose order the payment of the said sum of money in the said note mentioned was to be made, afterwards, before the payment thereof, and before the time limited in the said note for the payment thereof, to wit, on the day and year aforesaid, at the county aforesaid, endorsed the said note, and thereby then and there ordered and appointed the said sum of money, in the said note mentioned, to be paid to the said plaintiff. And the said plaintiff avers, that afterwards, and after the expiration of the said time limited in the said note for the payment thereof, to wit, on the twenty-fourth day of December, in the year of our Lord eighteen hundred and twenty-one, he shewed and presented the said note, with the endorsement so made thereon as aforesaid, to the said Levin Stewart, and then and there required the said Levin Stewart to pay the same; but the said Levin Stewart did not then nor at any time since pay the same or any part thereof to the said plaintiff, but then and there wholly refused so to do; of all which premises the said defendants afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, had notice.

By reason whereof, and by force of the statute in such made and provided, the said defendants became liable to pay the said sum of money, in the said note mentioned, to the said plaintiff, according to the tenor and effect of the same, and the said endorsement thereon, and being so liable in consideration thereof, then and there undertook and promised to the said plaintiff to pay him the same according to the tenor and effect thereof, and the endorsement thereon, whenever afterwards they should be thereto requested.

And whereas the said defendants, afterwards, to wit, on the twenty-fourth day of December, in the year of our Lord eighteen hundred and twenty-one, to wit, at the county aforesaid, were indebted unto the plaintiff in another sum of one hundred and one dollars, like money, for the like sum of money by the said plaintiff, to and for the use of the said defendants before that time paid, laid out, and expended, at the special instance and request of the said defendants, and for other money by the said plaintiff before that time lent and advanced to the said defendants, at their special instance and request, and for other money by the said defendants before that time had and received to the use of the said plaintiff, and being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and promised the said plaintiff to pay him the said last mentioned sum of money, when afterwards they should be thereunto requested.

Yet the said defendants, the said several sums of money herein mentioned, or any part thereof, (although often thereto requested, to wit, on the day and year last aforesaid, and often afterwards, to wit, at the county aforesaid,) have not paid to the said plaintiff, but the same, or any part thereof, to pay to the said plaintiff, have hitherto wholly refused, and still do refuse, to the damage of the said plaintiff in the sum of five hundred dollars, current money, and therefore he brings suit, and so forth.

KEY & DUNLOP, *Plaintiff's Attorney.*

JOHN DOE,
RICHARD ROE, } *Pledges, &c.*

And thereupon, on the motion of the aforesaid William S. Nicholls, by his attorneys aforesaid, it is ruled by the court here that the said Samuel and Joseph N. Fearson answer to the declaration aforesaid, of the said William S. Nicholls, in plea aforesaid, or judgment by the court here will be entered against them in default thereof; and the said Samuel S. Fearson and Jo-

seph N. Fearson, by their attorney aforesaid, defend the force and injury, when, and so forth, and say that they did not assume upon themselves in manner and form, as the aforesaid William S. Nicholls, above against them hath complained, and of this they put themselves upon the country; and the said William S. Nicholls, in like manner, and so forth; therefore let a jury thereon appear before the court here, on the third Monday of December next, by whom, and who, neither, and so forth, to recognize, and so forth, because as well, and so forth; the same day is given to the said parties, then and there, and so forth. At which said third Monday, of December, in the year of our Lord eighteen hundred and twenty-five, comes again into the circuit court here, as well as the said William S. Nicholls, by his attorneys aforesaid, as the said Samuel S. Fearson and Joseph N. Fearson, by their attorney aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is continued until the first Monday of May next.

And now at this day, to wit, the said first Monday of May, in the year of our Lord one thousand eight hundred and twenty-six, comes again into the circuit court here, as well the said William S. Nicholls, by his attorneys aforesaid, as the said Samuel S. Fearson and Joseph N. Fearson, by their attorney aforesaid. Whereupon for trying the issue aforesaid, between the parties aforesaid, it is ordered by the court here that twelve persons from the pannel of petit jurors returned to the court here by the marshal of the District aforesaid, be drawn by ballot; and thereupon the twelve persons so drawn being called, come, who being empannelled and sworn to say the truth in the premises, upon their oath do say, that the said Samuel S. Fearson and Joseph N. Fearson did not undertake and promise in manner and form as the said William S. Nicholls, within, against them hath complained; therefore it is considered by the court here that the said William S. Nicholls take nothing by his writ and declaration aforesaid, but that he be in mercy, and so forth, for his false clamor, and that the said Samuel S. Fearson and Joseph N. Fearson go thereof without day, and so forth; and it is also considered by the court here that the said Samuel S. Fearson and Joseph N. Fearson recover against the said William S. Nicholls the sum of thirty-two dollars and sixty-nine cents, by the court here unto them, the Samuel S. Fearson and Joseph N. Fearson, on their assent, adjudged for their costs and charges by them about their defence in that behalf laid out and expended, and that they have thereof their execution against the aforesaid William S. Nicholls, and so forth.

Memorandum.—Before the jurors aforesaid withdrew from the bar of the court here, the said Plaintiff, by his said attorneys aforesaid, filed in court here, the following bill of exceptions, to wit:

"The plaintiff, to support the issue on his part, proved by a competent witness that the defendants came into plaintiff's store, on 26th October, 1821, with the note on which this suit is brought, viz:

GEORGETOWN, *22d October*, 1821.

$101.

Sixty days after date, I promise to pay S. and J. Fearson, or order, one hundred and one dollars for value received.

LEVIN STEWART.

Endorsed, S. and J. FEARSON.